

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

GEOFFREY PORTWAY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**CASE NUMBERS
12-CR-40064-TSH
14-CV-40137-TSH**

**ORDER ON PETITIONER’S APPLICATION FOR CERTIFICATE OF
APPEALABILITY (Docket No. 96)**

December 1, 2015

HILLMAN, D.J.

On May 20, 2015, this Court denied Petitioner’s motion to vacate, set aside, or correct a sentence in federal custody pursuant to 28 U.S.C. § 2255. Petitioner now seeks a certificate of appealability relating to that order. The statute governing appeals of final orders in proceedings under section 2255 provides that an appeal is not permitted “[u]nless a circuit justice or judge issues a certificate of appealability.” 28 U.S.C. § 2253(c)(1). A certificate of appealability may issue “only if the applicant has made a substantial showing of the denial of a constitutional right.” § 2253(c)(2). To make a “substantial showing,” a petitioner must demonstrate that “reasonable jurists could debate whether . . . the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (internal quotation marks and citation omitted).

As explained in this Court’s order of May 20, 2015, Petitioner knowingly and voluntarily waived his rights to collaterally challenge his sentence by way of section 2255. Furthermore, even

if the waiver had been invalid or his claim had been jurisdictional, Petitioner procedurally defaulted on his argument that the criminal statutes under which he was convicted exceeded Congressional authority. Because Petitioner waived his appellate rights and procedurally defaulted on his claim, this Court did not have cause to reach the Constitutional questions raised by his section 2255 motion. Petitioner is not entitled to a certificate of appealability because he has not made a substantial showing of the denial of any constitutional right.

Petitioner's application for certificate of appealability (Docket No. 96) is *denied*.

SO ORDERED.

/s/ Timothy S. Hillman
TIMOTHY S. HILLMAN
DISTRICT JUDGE